

Hearing Date: February 11, 2009 at 10:00 a.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11 Case No.
	:	
LEHMAN BROTHERS HOLDINGS INC., <u>et al.</u> ,	:	08-13555 (JMP)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**JOINDER OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO DEBTORS' OBJECTION TO MOTION OF
25 BROAD, LLC FOR LEAVE TO CONDUCT RULE 2004
DISCOVERY OF LEHMAN BROTHERS HOLDINGS INC.**

The Official Committee of Unsecured Creditors (the "Committee") of Lehman Brothers Holdings Inc. ("LBHI"), and its affiliated chapter 11 debtors in possession (collectively, the "Debtors"), hereby joins (the "Joinder") in the Debtors' Objection (the "Objection") to the Motion of 25 Broad, LLC ("25 Broad") For Leave to Conduct Rule 2004 Discovery of Debtor Lehman Brothers Holdings Inc., dated January 23, 2009 [Docket No. 2610] (the "Motion"). In support of its Joinder, the Committee respectfully states as follows:

BACKGROUND

1. Commencing on September 15, 2008 (the "Petition Date"), and periodically thereafter, the Debtors filed with this Court voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the

“Bankruptcy Code”). On September 17, 2008, the Office of the United States Trustee appointed the Committee.

2. On January 22, 2009, LBHI commenced two actions in the Supreme Court of the State of New York against certain entities and individuals, including 25 Broad, to foreclose on certain mortgages encumbering properties located at 25 Broad Street, New York New York, and 45 Broad Street, New York, New York, which are owned by 25 Broad and one of its affiliates (collectively, the “Foreclosure Proceedings”). On the following day, 25 Broad filed the Motion seeking, pursuant to section 105(a) of the Bankruptcy Code and rule 2004 of the Federal Rules of Bankruptcy Procedure (“Rule 2004”), an order authorizing and directing LBHI to produce (a) all documents and things relating to 25 Broad Street and 45 Broad Street, as well as the development and the related financing by LBHI of such properties; and (b) one or more witnesses for a Rule 30(b)(6) deposition of LBHI regarding the above-mentioned topics.

THE COMMITTEE’S JOINDER

3. The Committee concurs with the arguments set forth in the Objection and, accordingly, files this Joinder in support thereof. More specifically, the Committee agrees with the Debtors that a party to litigation may not initiate a Rule 2004 examination after the commencement of an adversarial proceeding in another court that addresses the same issues. Courts have confirmed that, where non-bankruptcy litigation is pending, Rule 2004 examinations should not be permitted. See, e.g., In re Enron Corp., et al. 281 B.R. 836 (Bankr. S.D.N.Y. 2002) (denying request to conduct Rule 2004 examination due to pending securities litigation in district court); In re Duratech Indus., 241 B.R. 291 (Bankr. E.D.N.Y. 1999) (party engaged in pending district court litigation with the debtor not permitted to take Rule 2004 examination of debtor regarding same issues). 25 Broad is entitled to conduct discovery within the parameters

of New York law and in the context of the Foreclosure Proceedings pending in Supreme Court for the State of New York. It should not be permitted to use Rule 2004 to circumvent the applicable non-bankruptcy discovery rules.

WHEREFORE, for all of the foregoing reasons, the Committee respectfully requests that the Court deny the relief requested in the Motion.

Dated: New York, New York
February 6, 2009

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